PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of Tyre Treads India, (P) Ltd., No 1, New Mental Hospital Road, Hosur Road, Bangalore-27.

Award of the Labour Court, Bangalore published.

Read the following papers :

(1) Letter No. 1107/72-73, dated 23rd November 1972, from Sri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 23rd day of November 1972.

Present :

Sri P. Srinivasacharya, B.A., LL.B., .. *Presiding Officer.*

Reference No. 89 of 1969.

I Party.—

Workmen represented by the Secretary, Bangalore General Labour Union, Subedarchatram Road, Bangalore-9.

II Party.—

The Management of Tyre Treads India (P) Ltd., No. 1, New Mental Hospital Road, Hosur Road, Near Lalbagh. Bangalore-27.

Reference :

Government Order No. FCL 459 LLD 69, dated 4th August 1969.

AWARD

1. The Government of Mysore in their Order No. FCL 459 LLD 69, dated 4th August 1969 have referred an Industrial dispute existing between the above named parties to this court for adjudication on the points of dispute noted below :—

> "Whether the management of Tyre Treads India (P) Ltd., No. 1, New Mental Hospital Road Hosur Road, Near Lalbagh, Bangalore-27 is justified in terminating the services of Sri T. S. Kannan, workman ? If not is the workman Sri T. S. Kannan, entitled for reinstatement with back wages and continuity of service or any other reliefs ?"

2. On behalf of the first party workman T. S. Kannan (hereinafter referred to as workman) claim statement is filed as follows :—The second party is a private limited company dealing in retreading of all kinds of tyres. The workman was doing all sorts of work including retreading the tyres, buffing the tyres, operating the retreading machine etc., At first the workman was working in the workshop of Sri B. K. Devaraj from 15th July 1966. His services were transferred to the second party company from 1st March 1962 and he was informed that his services are continued with continuity of service. He was being paid Rs. 250 p.m. at that time and it was increased to Rs. 300 p.m. The second party was compelling the workman to do certain acts which were against the will and conscious of the workman. The workman was opposing the same:

The second party got enraged and was waiting for a chance to victimise the workman. On 17th June 1968 the workman was told that the business had dwindled very much and therefore the workman was retrenched. In the 3rd week of June his earned wages amounting to Rs. 170 was paid and his signature was taken on two vouchers. The workman approached the management after some time stating that its action was unjustified. Thereafter the Union sent a letter demanding payment of retrenchment compensation. The management replied that it had not retrenched the workman, on the other hand, the workman had voluntarily relinquished his job. The workman was not allowed to work even thereafter. The Union wrote a letter demanding reinstatement of the workman but no reply was sent by the second party. The action of the second party is illegal, and unjustified. The workman is entitled to be reinstated with back wages and with continuity of service.

3. On behalf of the second party counter statement has been filed as follows :—

Sri Kannan was a supervisor and he was not doing with toiling labour. The allegation that the workman was working in the workshop of B. K. Devaraj is denied. The said Devaraj has no workshop as such. It is true that the workman was working in the second party since 1962. But the allegation of continuity of service from his service in any workshop is denied. The second party did not retrench the workman as alleged. On the other hand the workman voluntarily left his job with a view to run his independent business. There was no notice to the management. The management took a lenient view and settled all his claims and relieved him of his duties. The present allegation of the workman is with a view to grab money from the second party. In fact the second party suffered because of the relinquishment of service by the workman. All letters from the first party have been suitable replied. There was no termination of the workman from service. Even during the conciliation there was a sportive offer to re-employ him.

But he refused. Even now the second party offers to employ him. The workman has been misguided by his union. He is not entitled to any relief.

4. On these pleadings the following issues have been framed by my learned predecessor :—

1. Whether I Party workman was a member of I Party even before the dispute started ?
2. Whether I Party union has locus stand to represent I party workman ?
3. Whether I Party workman was unjustifiably terminated from his service ?

Or

Whether I Party workman voluntarily gave up his services after settling his claims ?

4. Whether I Party workman is entitled to be reinstated with back wages ?
5. To relief, if any, is I Party workman entitled to ?

5. On 10th August 1970 Sri K. V. Vasanth, learned Advocate for the second party stated that he does not press issue No. 1 and 2. Therefore my learned predecessor has recorded on the order sheet of that date that issues 1 and 2 have been held against the second party.

6. Issue No. 3 relates to the question whether the workman was unjustifiably terminated from service as contended by him or whether the workman voluntarily gave up his services after settling all his claims as contended by the second party. M.W.1 is B. K. Devaraj who is the Managing Director of second party concern. In his deposition he states that the workman was working as a supervisor from 1962. He left in 1968 voluntarily. Whatever due was paid to him. He has taken a payment vouchers from him as per Exhibit M. 1 and M. 2. The workman told him that he wanted to start a workshop of his own and to better his

prospects he was leaving the concern. He also stated that he will not serve anybody. The workman has started his own workshop and is running it. He did not terminate his services. This is all the evidence let in by the second party in this case Exhibit M. 1 and 2 are the two vouchers obtained from the workman. Under Exhibit M. 1 a sum of Rs. 170 has been paid and it is stated that it represents the salary of the workman for 17 days in June 1968. Under Exhibit M. 2 a sum of Rs. 161—25 has been paid to the workman and it is stated that it is in final settlement of all other claims whatever fully and finally and the workman has left his job of his own accord on 17th June 1968. Exhibit M. 1 is dated 28th June 1968 and Exhibit M. 2 is dated 29th June 1968. M.W. 1 in his cross-examination admits that he does not know what the amount in Exhibit M. 2 represents. Further in respect of obtaining these vouchers Exhibit M. 1 and M. 2 the evidence of M.W. 1 is discrepant. In his examination in chief M.W. 1 says that he has taken a payment vouchers from the workman as per Exhibit M. 1 and M. 2. In his cross-examination, however, he states that he was not obtaining the signatures of the workman, but it is the office which does it. He does not know on how many vouchers signatures were being obtained in the office. Again in voluntered that the workman himself was all in all and making payments and taking vouchers. He states that he pays the amount to the clerk or manager who works out the amount.

7. On the other hand the workman W.W. 2 states that on 17th June 1968 his services were terminated and he did not voluntarily abandoned his services. His services were terminated saying that the company was running in loss and his salary was too high. He stated that the company was not working in loss but on the other hand it is running in profit. For this the Managing Director told him that his services were not required. He says that he signed on two vouchers on 17th June 1968 but now they have been dated differently. He does not know the contents of it. As noticed earlier Exhibit M. 1 and 2 bear two different dates. The contents of Exhibit M. 1 and 2 appear to

have been written by two different persons. The ink in which they have been written are also appear to be different. Further the amount Rs. 161-25 appearing in Exhibit M. 2 is written in a different ink than its body. But the signature of the workman appear to be in the same ink. M.W. 1 tries to explain that on 28th June 1968 the workman received the salary and went away. Again he came on 29th June 1968 and demanded his arrears. I am of opinion that this is not a probable version. As stated earlier M.W. 1 has stated that he took the vouchers Exhibit M. 1 and M. 2. But he does not know what the money in Exhibit M. 2 represents. He says that he asked his clerk to calculate the arrears and pay him and he did not go into the details, on behalf of the second party the amount books have not been produced to prove these payments to the workman. In these circumstances I am of opinion that much reliance cannot be placed on Ex. M-1 and 2. It is probable that when the workman signed them they were blank and that they have been filled up later to suit the purposes of this case.

8. It is the case of the second party that the workman left his service voluntarily on the ground of starting his own workshop. If that was the case the workman would not have initiated conciliation proceedings and would not have made any demands on the management. It is seen from the very beginning the case of the workman is that he was terminated from service on 17th June 1968. This is not the conduct of a person who gave up his job to start his own business. It is seen that in Ex. M-3 which is the reply given by the advocates of the second party that in spite of the best efforts of the second party to retain the workman in services he was keen on starting his own tyre repair business. This effort said to have been made by the second party to retain the workman in service has not been stated in the counter statement and M.W. 1 also does not speak about it. The allegation of the workman is that on the complaint of some theft of tyres in the concern the services of the workman were terminated. Considering all the facts and circumstances of the case I am of opinion that the version put forth by the workman is more probable than the one set up by the second party. Further it is seen that the points of dispute referred for adjudication as framed

casts the burden on the second party to prove its justifiability in terminating the services of the workman. The defence set up by the second party i.e. voluntary abandonment of service, has not been satisfactorily established. I therefore hold on issue No. 3 that the workman was unjustifiably terminated from service and that he did not voluntarily give up his service.

9. Now the question for consideration is whether the workman is entitled to reinstatement. From the pleadings as also the evidence let in the present case it is seen that the feelings between the parties has become very strained Even during the course of the proceedings in this case the workman as agreed had gone to work, but he again came back with a complaint that he was ill treated by management which has been denied by the second party. Many allegations of mal-practices have been suggested against the second party. Considering all these circumstances I am of opinion that this is not a fit case in which I should order reinstatement of the workman. I am of opinion that it would meet with the ends of justice if suitable compensation is awarded to the workman.

10. Regarding the length of service of the workman there is a good deal of controversy. The contention of the workman is that previous to 1962 he was working in the workshop of the Managing Director and that he was transferred to the second party with continuity of service. The second party has denied this allegation. However there is no satisfactory evidence adduced on behalf of the first party to prove that the Managing Director of the second party is having some workshop. Even otherwise it would be seen that the second party is a private limited company and is a separate and distinct legal entity. Even according to the workman the workshop belongs to the Managing Director personally. Therefore I am of opinion that even if the workman had worked in any such workshop, which is not proved satisfactorily, he cannot tag on the service rendered by him in that workshop to his service in the second party. The workman has put in six years and three months service in the second party concern. At the time of his termination from service he was being paid Rs. 300 per month. The contention of the second party is that the workman is now

running his own business. The workman has denied this and has stated that he is unemployed and is living with his son who is a peon in Canara Bank. Considering all these circumstances I am of opinion that it would meet with ends of justice if the workman is awarded a sum of Rs. 3,600 as compensation for his illegal termination from service. The said sum represents his salary for one year, as he was getting Rs. 300 per month.

11. In the result I pass an award directing the second party to pay a sum of Rs. 3,600 to the first party workman as compensation for his illegal termination. No costs.

P. SRINIVASACHARYA,
Presiding Officer
Labour Court, Bangalore.

ORDER

Bangalore, dated 27th December, 1972.

S.O. 269.—WHEREAS by State Government Order No. FCL 459 LLD 69, dated 4th August 1969 the Industrial Dispute between the workmen and the management of Tyre Treads India (P) Ltd., No. 1, New Mental Hospital Road, Hosur Road, Bangalore-27 was referred to the Labour Court, Bangalore for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 256 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies & Labour Department.